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2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 SCAP 9, LLC,

Case No. 3:22-cv-00380-MMD-CLB

7 v. Plaintiff,

ORDER

8 FINANCIAL INDUSTRY REGULATORY
9 AUTHORITY, INC.,

10 Defendant.

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12 Plaintiff SCAP 9, LLC asserts claims for intentional interference with contract, and
13 alternatively, for a taking without due process or just compensation under the federal and
14 Nevada constitutions, against Defendant the Financial Industry Regulatory Authority, Inc.
15 based on the allegation that Defendant designated a payment due Plaintiff under a lease
16 agreement with Plaintiff's affiliated entity Alpine Securities Corporation a sham payment
17 in a written order resolving a disciplinary proceeding against Alpine and forbade Alpine
18 from making the payment to Plaintiff. (ECF No. 1-1.) Before the Court is Defendant's
19 motion to dismiss.¹ (ECF No. 7 ("Motion").) Because Plaintiff's claims are alternatively
20 barred under the doctrine of regulatory immunity and because Plaintiff lacks a private
21 right of action against Defendant under these circumstances—and as further explained
22 below—the Court will grant the Motion.

23 Plaintiff's Complaint explicitly challenges a written decision rendered by
24 Defendant's hearing officers at the conclusion of an enforcement proceeding brought by
25 Defendant against Alpine. (ECF No. 1-1 at 6-8.) Thus, "underlying all of [Plaintiff's]
26 allegations contained in its complaint is [Defendant's] conduct undertaken under the
27 authority delegated to it by the Exchange Act." *P'ship Exch. Sec. Co. v. Nat'l Ass'n of*

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¹Plaintiff filed a response (ECF No. 17) and Defendant filed a reply (ECF No. 20).

1 Sec. Dealers, Inc., 169 F.3d 606, 608 (9th Cir. 1999). Plaintiff's claims are accordingly
 2 barred. See *id.*; see also *Pee Pee Pop Tr. v. Fin. Indus. Regul. Auth., Inc.*, Case No. 3:19-
 3 cv-00240-MMD-CBC, 2019 WL 4723788, at *4 (D. Nev. Sept. 26, 2019) ("FINRA is
 4 otherwise entitled to regulatory immunity here because the allegations and relief sought
 5 in the Complaint focus on FINRA's application of [its] own rules in an ongoing enforcement
 6 proceeding"). Plaintiff attempts to resist this conclusion by arguing Defendant exceeded
 7 its regulatory authority in determining that the lease agreement between Plaintiff and
 8 Alpine was a sham. (ECF No. 17 at 6-7.) However, Plaintiff is incorrect. "[R]egulatory
 9 immunity bars many of Plaintiffs' claims, including those claims alleging that Defendants
 10 exceeded the scope of their regulatory and investigatory authority." *Hurry v. Fin. Indus.*
 11 *Regul. Auth., Inc.*, 782 F. App'x 600, 602 (9th Cir. 2019) (citation omitted).

12 Alternatively, the Court also agrees with Defendant (ECF No. 7 at 11-13) that
 13 Plaintiff lacks a private right of action against Defendant under these circumstances. See
 14 *Pee Pee Pop Tr.*, 2019 WL 4723788, at *3-*4. Despite acknowledging *Jablon v. Dean*
 15 *Witter & Co.*, 614 F.2d 677, 681 (9th Cir. 1980) (finding no private right of action for
 16 violations of stock association rules), Plaintiff counters that it should have a private right
 17 of action because it would otherwise have no remedy for its loss—the \$610,373 Alpine
 18 purportedly owed it under the lease agreement. (ECF No. 17 at 7-9.) But this argument,
 19 too, is simply incorrect. The appeal rights in the Securities Exchange Act of 1934 (the
 20 "Exchange Act") are provided to any "person aggrieved," not just Defendant's members.
 21 See 15 U.S.C. § 78y(a)(1). In any event, Plaintiff lacks a private right of action against
 22 Defendant under the Exchange Act for the actions described in Plaintiff's own Complaint
 23 (ECF No. 1 at 6-8), where Defendant was performing "its self-regulatory duties under the
 24 [Exchange] Act." *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209,
 25 1213 (9th Cir. 1998), abrogated on other grounds by *Merrill Lynch, Pierce, Fenner & Smith*
 26 *Inc. v. Manning*, 578 U.S. 374 (2016).

27 It is therefore ordered that Defendant's motion to dismiss (ECF No. 7) is granted.

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It is further ordered that Plaintiff's Complaint (ECF No. 1-1) is dismissed in its entirety, with prejudice, as amendment would be futile.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 30th Day of March 2023.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE